

SENATE BILL 439

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SB 182/03 - FIN

2004 Regular Session  
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CF 4r1584

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By: **Senator Kelley**  
Introduced and read first time: February 5, 2004  
Assigned to: Finance

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Committee Report: Favorable with amendments  
Senate action: Adopted  
Read second time: February 26, 2004

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Insurance - Viatical Settlement Providers and Viatical Settlement Brokers**

3 FOR the purpose of requiring viatical settlement providers and viatical settlement  
4 brokers to register with the Maryland Insurance Commissioner under certain  
5 circumstances; providing that this Act applies only to certain contracts between  
6 viators and viatical settlement providers; establishing certain registration  
7 requirements; requiring viatical settlement providers and viatical settlement  
8 brokers to make certain disclosures in a certain manner to viators under certain  
9 circumstances; providing for renewal of registrations; authorizing the  
10 Commissioner to deny a registration to an applicant or refuse to renew, suspend,  
11 or revoke a registration under certain circumstances; authorizing the  
12 Commissioner to impose a certain penalty or require restitution under certain  
13 circumstances; establishing certain violations of this Act; allowing viatical  
14 settlement providers and viatical settlement brokers transacting business in  
15 this State on the effective date of this Act to continue to transact business in this  
16 State without being registered until a certain time under certain circumstances;  
17 defining certain terms; requiring the Maryland Insurance Administration to  
18 report to certain committees of the General Assembly at a certain time; and  
19 generally relating to viatical settlement providers and viatical settlement  
20 brokers under insurance.

21 BY adding to  
22 Article - Insurance  
23 Section 8-601 through 8-610, inclusive, to be under the new subtitle "Subtitle 6.  
24 Viatical Settlement Providers and Viatical Settlement Brokers"  
25 Annotated Code of Maryland  
26 (2003 Replacement Volume)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Insurance**

4 SUBTITLE 6. VIATICAL SETTLEMENT PROVIDERS AND VIATICAL SETTLEMENT  
5 BROKERS.

6 8-601.

7 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
8 INDICATED.

9 (B) "ACTIVITIES OF DAILY LIVING" INCLUDES BATHING, CONTINENCE,  
10 DRESSING, EATING, TOILETING, AND TRANSFERRING.

11 (C) "CHRONICALLY ILL" MEANS THAT AN INDIVIDUAL:

12 (1) IS UNABLE TO PERFORM AT LEAST TWO ACTIVITIES OF DAILY  
13 LIVING;

14 (2) REQUIRES SUBSTANTIAL SUPERVISION TO PROTECT THE  
15 INDIVIDUAL FROM THREATS TO HEALTH AND SAFETY DUE TO SEVERE COGNITIVE  
16 IMPAIRMENT; OR

17 (3) HAS A LEVEL OF DISABILITY SIMILAR TO THAT DESCRIBED IN ITEM  
18 (1) OF THIS SUBSECTION.

19 (D) "CREDIT ENHANCER" INCLUDES AN AUTHORIZED INSURER THAT  
20 PROVIDES TO A VIATICAL SETTLEMENT PROVIDER STOP LOSS COVERAGE, AN  
21 ANNUITY POLICY, AN INSURANCE POLICY, OR SIMILAR COVERAGE.

22 (E) "FINANCING ENTITY" MEANS A PERSON:

23 (1) THAT IS AN UNDERWRITER, A PLACEMENT AGENT, A LENDER, A  
24 PURCHASER OF SECURITIES, A PURCHASER OF A POLICY OR CERTIFICATE FROM A  
25 VIATICAL SETTLEMENT PROVIDER, A CREDIT ENHANCER, OR AN ENTITY THAT HAS A  
26 DIRECT OWNERSHIP INTEREST IN A POLICY OR CERTIFICATE THAT IS THE SUBJECT  
27 OF A VIATICAL SETTLEMENT CONTRACT; AND

28 (2) (I) WHOSE PRINCIPAL ACTIVITY RELATED TO THE TRANSACTION  
29 IS PROVIDING FUNDS TO EFFECT THE VIATICAL SETTLEMENT OR PURCHASE OF ONE  
30 OR MORE VIATICATED POLICIES;

31 (II) THAT HAS AN AGREEMENT IN WRITING WITH ONE OR MORE  
32 REGISTERED VIATICAL SETTLEMENT PROVIDERS TO FINANCE THE ACQUISITION OF  
33 VIATICAL SETTLEMENT CONTRACTS; OR

34 (III) THAT IS A QUALIFIED INSTITUTIONAL BUYER, AS THAT TERM IS  
35 DEFINED IN RULE 144A OF THE FEDERAL SECURITIES ACT OF 1933.

1 (F) "POLICY" MEANS AN INDIVIDUAL OR GROUP POLICY, GROUP CERTIFICATE,  
2 CONTRACT, OR ARRANGEMENT OF LIFE INSURANCE THAT AFFECTS THE RIGHTS OF A  
3 RESIDENT OF THE STATE OR THAT BEARS A REASONABLE RELATION TO THE STATE,  
4 REGARDLESS OF WHETHER DELIVERED OR ISSUED FOR DELIVERY IN THE STATE.

5 (G) "RELATED PROVIDER TRUST" MEANS A TITLING TRUST OR OTHER TRUST  
6 THAT:

7 (1) IS ESTABLISHED BY A REGISTERED VIATICAL SETTLEMENT  
8 PROVIDER OR A FINANCING ENTITY FOR THE SOLE PURPOSE OF HOLDING THE  
9 OWNERSHIP OR BENEFICIAL INTEREST IN PURCHASED POLICIES IN CONNECTION  
10 WITH A FINANCING TRANSACTION; AND

11 (2) HAS A WRITTEN AGREEMENT WITH THE REGISTERED VIATICAL  
12 SETTLEMENT PROVIDER UNDER WHICH:

13 (I) THE VIATICAL SETTLEMENT PROVIDER IS RESPONSIBLE FOR  
14 ENSURING COMPLIANCE WITH ALL STATUTORY AND REGULATORY REQUIREMENTS;  
15 AND

16 (II) THE TRUST AGREES TO MAKE ALL RECORDS AND FILES  
17 RELATED TO VIATICAL SETTLEMENT TRANSACTIONS AVAILABLE TO THE  
18 COMMISSIONER AS IF THOSE RECORDS AND FILES WERE MAINTAINED DIRECTLY BY  
19 THE REGISTERED VIATICAL SETTLEMENT PROVIDER.

20 (H) "SPECIAL PURPOSE ENTITY" MEANS A CORPORATION, PARTNERSHIP,  
21 TRUST, LIMITED LIABILITY COMPANY, OR OTHER SIMILAR ENTITY FORMED SOLELY  
22 TO PROVIDE, EITHER DIRECTLY OR INDIRECTLY, ACCESS TO INSTITUTIONAL CAPITAL  
23 MARKETS FOR A FINANCING ENTITY OR A REGISTERED VIATICAL SETTLEMENT  
24 PROVIDER.

25 (I) "TERMINALLY ILL" MEANS THAT AN INDIVIDUAL HAS AN ILLNESS OR  
26 SICKNESS THAT CAN REASONABLY BE EXPECTED TO RESULT IN DEATH IN 24  
27 MONTHS OR LESS.

28 (J) (1) "VIATICAL SETTLEMENT BROKER" MEANS A PERSON THAT ON  
29 BEHALF OF A VIATOR AND FOR A FEE, COMMISSION, OR OTHER VALUABLE  
30 CONSIDERATION OFFERS OR ATTEMPTS TO NEGOTIATE VIATICAL SETTLEMENT  
31 CONTRACTS BETWEEN A VIATOR AND ONE OR MORE VIATICAL SETTLEMENT  
32 PROVIDERS.

33 (2) "VIATICAL SETTLEMENT BROKER" DOES NOT INCLUDE:

34 (I) AN ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, OR  
35 FINANCIAL PLANNER ACCREDITED BY A NATIONALLY RECOGNIZED ACCREDITATION  
36 AGENCY, WHO IS RETAINED TO REPRESENT THE VIATOR AND WHOSE  
37 COMPENSATION IS NOT PAID DIRECTLY OR INDIRECTLY BY THE VIATICAL  
38 SETTLEMENT PROVIDER; OR

1 (II) AN INDIVIDUAL WHO, ON BEHALF OF A VIATOR AND FOR A FEE,  
2 COMMISSION, OR OTHER VALUABLE CONSIDERATION, OFFERS OR ATTEMPTS TO  
3 NEGOTIATE NO MORE THAN ONE VIATICAL SETTLEMENT CONTRACT BETWEEN A  
4 VIATOR AND ONE OR MORE VIATICAL SETTLEMENT PROVIDERS IN A CALENDAR  
5 YEAR.

6 (K) (1) "VIATICAL SETTLEMENT CONTRACT" MEANS A WRITTEN  
7 AGREEMENT THAT ESTABLISHES THE TERMS UNDER WHICH COMPENSATION OR  
8 ANYTHING OF VALUE WILL BE PAID, WHICH COMPENSATION OR VALUE IS LESS  
9 THAN THE EXPECTED DEATH BENEFIT OF THE POLICY, IN RETURN FOR THE  
10 VIATOR'S ASSIGNMENT, TRANSFER, SALE, DEVISE, OR BEQUEST OF THE DEATH  
11 BENEFIT OR OWNERSHIP OF ANY PART OF THE POLICY.

12 (2) "VIATICAL SETTLEMENT CONTRACT" INCLUDES:

13 (I) A CONTRACT FOR A LOAN OR OTHER FINANCING TRANSACTION  
14 WITH A VIATOR SECURED PRIMARILY BY A POLICY, OTHER THAN A LOAN BY A LIFE  
15 INSURER UNDER THE TERMS OF THE POLICY OR A LOAN SECURED BY THE CASH  
16 VALUE OF A POLICY; AND

17 (II) AN AGREEMENT WITH A VIATOR TO TRANSFER OWNERSHIP OR  
18 CHANGE THE BENEFICIARY DESIGNATION AT A LATER DATE REGARDLESS OF THE  
19 DATE THAT COMPENSATION IS PAID TO THE VIATOR.

20 (3) "VIATICAL SETTLEMENT CONTRACT" DOES NOT INCLUDE A  
21 CONTRACT ENTERED INTO OR EFFECTUATED BETWEEN A VIATICAL SETTLEMENT  
22 PROVIDER AND A FINANCING ENTITY, A RELATED PROVIDER TRUST, OR A SPECIAL  
23 PURPOSE ENTITY.

24 (L) (1) "VIATICAL SETTLEMENT PROVIDER" MEANS A PERSON, OTHER THAN  
25 A VIATOR, THAT ENTERS INTO OR EFFECTUATES A VIATICAL SETTLEMENT  
26 CONTRACT.

27 (2) "VIATICAL SETTLEMENT PROVIDER" DOES NOT INCLUDE AN  
28 INDIVIDUAL WHO ENTERS INTO OR EFFECTUATES NO MORE THAN ONE AGREEMENT  
29 IN A CALENDAR YEAR FOR THE TRANSFER OF POLICIES FOR ANY VALUE LESS THAN  
30 THE EXPECTED DEATH BENEFIT.

31 (M) "VIATICATED POLICY" MEANS A POLICY THAT HAS BEEN ACQUIRED BY A  
32 VIATICAL SETTLEMENT PROVIDER UNDER A VIATICAL SETTLEMENT CONTRACT.

33 (N) (1) "VIATOR" MEANS THE OWNER OR CERTIFICATE HOLDER OF A POLICY  
34 WHO ENTERS OR SEEKS TO ENTER INTO A VIATICAL SETTLEMENT CONTRACT.

35 (2) "VIATOR" DOES NOT INCLUDE AN ACCREDITED INVESTOR OR  
36 QUALIFIED INSTITUTIONAL BUYER, AS DEFINED IN REGULATION D, RULE 501, OR  
37 RULE 144A OF THE FEDERAL SECURITIES ACT OF 1933.

1 8-602.

2 THIS SUBTITLE APPLIES ONLY TO A VIATICAL SETTLEMENT CONTRACT  
3 BETWEEN A VIATOR AND A VIATICAL SETTLEMENT PROVIDER.

4 8-603.

5 (A) A PERSON MUST REGISTER WITH THE COMMISSIONER BEFORE THE  
6 PERSON ACTS AS OR REPRESENTS ITSELF AS A VIATICAL SETTLEMENT PROVIDER OR  
7 VIATICAL SETTLEMENT BROKER IN THE STATE.

8 (B) EMPLOYEES AND AGENTS OF A REGISTERED VIATICAL SETTLEMENT  
9 PROVIDER OR A REGISTERED VIATICAL SETTLEMENT BROKER MAY NOT BE  
10 REQUIRED TO BE SEPARATELY REGISTERED EXCEPT IN ACCORDANCE WITH  
11 REGULATIONS ADOPTED BY THE COMMISSIONER.

12 8-604.

13 AN APPLICANT FOR REGISTRATION SHALL:

14 (1) FILE WITH THE COMMISSIONER AN APPLICATION ON THE FORM  
15 THAT THE COMMISSIONER REQUIRES; AND

16 (2) PAY TO THE COMMISSIONER A REGISTRATION FEE SET BY THE  
17 COMMISSIONER.

18 8-605.

19 (A) NOTWITHSTANDING THE MANNER IN WHICH THE VIATICAL SETTLEMENT  
20 BROKER IS COMPENSATED, A VIATICAL SETTLEMENT BROKER IS DEEMED TO  
21 REPRESENT ONLY THE VIATOR AND OWES A FIDUCIARY DUTY TO THE VIATOR TO  
22 ACT ACCORDING TO THE VIATOR'S INSTRUCTIONS AND IN THE BEST INTEREST OF  
23 THE VIATOR.

24 (B) FOR PURPOSES OF THIS SUBTITLE, A VIATOR MAY NOT BE LIMITED TO AN  
25 OWNER OR CERTIFICATE HOLDER OF A POLICY THAT INSURES THE LIFE OF AN  
26 INDIVIDUAL ~~WITH A TERMINAL OR CHRONIC ILLNESS OR CONDITION~~ WHO IS  
27 TERMINALLY ILL OR CHRONICALLY ILL.

28 8-606.

29 (A) BEFORE AN OFFER TO PURCHASE A POLICY CAN BE MADE TO A VIATOR, A  
30 VIATICAL SETTLEMENT PROVIDER SHALL:

31 (1) PROVIDE THE VIATOR WITH A DISCLOSURE STATEMENT THAT:

32 (I) CONTAINS THE DISCLOSURES REQUIRED IN SUBSECTIONS (B)  
33 AND (C) OF THIS SECTION; AND

34 (II) HAS BEEN SIGNED BY THE VIATICAL SETTLEMENT PROVIDER;  
35 AND

1           (2)     RECEIVE FROM THE VIATOR THE DISCLOSURE STATEMENT SIGNED  
2 BY THE VIATOR.

3     (B)     BEFORE AN OFFER TO PURCHASE A POLICY CAN BE MADE TO THE VIATOR,  
4 A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE TO THE VIATOR A DISCLOSURE  
5 STATEMENT THAT CONTAINS THE FOLLOWING DISCLOSURES:

6           (1)     THERE ARE POSSIBLE ALTERNATIVES TO VIATICAL SETTLEMENT  
7 CONTRACTS, INCLUDING ANY ACCELERATED DEATH BENEFITS OR POLICY LOANS  
8 OFFERED UNDER THE VIATOR'S POLICY;

9           (2)     SOME OR ALL OF THE PROCEEDS OF THE VIATICAL SETTLEMENT  
10 MAY BE TAXABLE UNDER FEDERAL OR STATE INCOME TAX LAW, AND ASSISTANCE  
11 SHOULD BE SOUGHT FROM A PROFESSIONAL TAX ADVISER;

12          (3)     PROCEEDS OF THE VIATICAL SETTLEMENT COULD BE SUBJECT TO  
13 THE CLAIMS OF CREDITORS;

14          (4)     RECEIPT OF THE PROCEEDS OF A VIATICAL SETTLEMENT MAY  
15 ADVERSELY AFFECT THE VIATOR'S ELIGIBILITY FOR MEDICAID OR OTHER  
16 GOVERNMENT BENEFITS OR ENTITLEMENTS, AND ADVICE SHOULD BE OBTAINED  
17 FROM THE APPROPRIATE GOVERNMENT AGENCIES;

18          (5)     (I)     THE VIATOR HAS THE RIGHT TO RESCIND A VIATICAL  
19 SETTLEMENT CONTRACT FOR 15 CALENDAR DAYS AFTER RECEIPT OF THE VIATICAL  
20 SETTLEMENT PROCEEDS BY THE VIATOR, SUBJECT TO REPAYMENT OF ALL VIATICAL  
21 SETTLEMENT PROCEEDS AND ANY PREMIUMS AND LOAN INTEREST PAID BY THE  
22 VIATICAL SETTLEMENT PROVIDER; AND

23                 (II)     IF THE INSURED DIES DURING THE RESCISSION PERIOD, THE  
24 VIATICAL SETTLEMENT CONTRACT SHALL BE DEEMED TO HAVE BEEN RESCINDED,  
25 SUBJECT TO REPAYMENT OF ALL VIATICAL SETTLEMENT PROCEEDS AND ANY  
26 PREMIUMS, LOANS, AND LOAN INTEREST TO THE VIATICAL SETTLEMENT PROVIDER;

27          (6)     FUNDS WILL BE SENT TO THE VIATOR WITHIN 3 BUSINESS DAYS  
28 AFTER THE VIATICAL SETTLEMENT PROVIDER HAS RECEIVED THE INSURER'S OR  
29 GROUP ADMINISTRATOR'S ACKNOWLEDGMENT THAT OWNERSHIP OF OR INTEREST  
30 IN THE POLICY HAS BEEN TRANSFERRED AND THE BENEFICIARY HAS BEEN  
31 DESIGNATED;

32          (7)     ENTERING INTO A VIATICAL SETTLEMENT CONTRACT MAY CAUSE  
33 OTHER RIGHTS OR BENEFITS, INCLUDING CONVERSION RIGHTS AND WAIVER OF  
34 PREMIUM BENEFITS THAT MAY EXIST UNDER THE POLICY, TO BE FORFEITED BY THE  
35 VIATOR, AND ASSISTANCE SHOULD BE SOUGHT FROM A FINANCIAL ADVISER; AND

36          (8)     (I)     THE INSURED MAY BE CONTACTED BY EITHER THE VIATICAL  
37 SETTLEMENT PROVIDER OR THE VIATICAL SETTLEMENT BROKER OR ITS  
38 AUTHORIZED REPRESENTATIVE FOR THE PURPOSE OF DETERMINING THE  
39 INSURED'S HEALTH STATUS; AND

1 (II) THIS CONTACT IS LIMITED TO:

2 1. ONCE EVERY 3 MONTHS IF THE INSURED HAS A LIFE  
3 EXPECTANCY OF MORE THAN 1 YEAR; AND

4 2. NOT MORE THAN ONCE PER MONTH IF THE INSURED HAS  
5 A LIFE EXPECTANCY OF 1 YEAR OR LESS.

6 (C) (1) DISCLOSURE TO A VIATOR ALSO SHALL INCLUDE DISTRIBUTION OF A  
7 BROCHURE THAT DESCRIBES THE PROCESS OF VIATICAL SETTLEMENTS.

8 (2) THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS  
9 FORM FOR THE BROCHURE SHALL BE USED UNLESS A BROCHURE IS ~~DEVELOPED BY:~~

10 (I) DEVELOPED BY THE COMMISSIONER; OR

11 (II) DEVELOPED BY A VIATICAL SETTLEMENT BROKER OR VIATICAL  
12 SETTLEMENT PROVIDER THAT IS AND APPROVED BY THE COMMISSIONER.

13 (D) THE DISCLOSURE ~~DOCUMENT~~ STATEMENT SHALL CONTAIN THE  
14 FOLLOWING LANGUAGE: "ALL MEDICAL, FINANCIAL, OR PERSONAL INFORMATION  
15 SOLICITED OR OBTAINED BY A VIATICAL SETTLEMENT PROVIDER OR VIATICAL  
16 SETTLEMENT BROKER ABOUT AN INSURED, INCLUDING THE INSURED'S IDENTITY OR  
17 THE IDENTITY OF FAMILY MEMBERS, A SPOUSE, OR A SIGNIFICANT OTHER MAY BE  
18 DISCLOSED AS NECESSARY TO EFFECT THE VIATICAL SETTLEMENT BETWEEN THE  
19 VIATOR AND THE VIATICAL SETTLEMENT PROVIDER. IF YOU ARE ASKED TO PROVIDE  
20 THIS INFORMATION, YOU WILL BE ASKED TO CONSENT TO THE DISCLOSURE. THE  
21 INFORMATION MAY BE PROVIDED TO SOMEONE WHO BUYS THE POLICY OR  
22 PROVIDES FUNDS FOR THE PURCHASE. YOU MAY BE ASKED TO RENEW YOUR  
23 PERMISSION TO SHARE INFORMATION EVERY 2 YEARS."

24 (E) A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER  
25 SHALL PROVIDE THE VIATOR WITH A COPY OF THE DISCLOSURE STATEMENT SIGNED  
26 BY THE VIATOR AND THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL  
27 SETTLEMENT BROKER, AT THE TIME THAT AN APPLICATION FOR A VIATICAL  
28 SETTLEMENT CONTRACT IS PROVIDED TO THE VIATOR.

29 (F) (1) A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE THE VIATOR  
30 WITH AT LEAST THE DISCLOSURES REQUIRED BY THIS SUBSECTION NO LATER THAN  
31 THE DATE THAT THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY ALL PARTIES.

32 (2) THE DISCLOSURES SHALL BE CONSPICUOUSLY DISPLAYED IN THE  
33 VIATICAL SETTLEMENT CONTRACT OR IN A SEPARATE DOCUMENT SIGNED BY THE  
34 VIATOR AND THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT  
35 BROKER.

36 (3) THE DISCLOSURES REQUIRED UNDER THIS SUBSECTION SHALL  
37 PROVIDE THE FOLLOWING INFORMATION:

1 (I) A STATEMENT OF THE AFFILIATION, IF ANY, BETWEEN THE  
2 VIATICAL SETTLEMENT BROKER, VIATICAL SETTLEMENT PROVIDER, AND THE  
3 INSURER THAT ISSUED THE POLICY TO BE VIATICATED;

4 (II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE  
5 VIATICAL SETTLEMENT PROVIDER;

6 (III) A DISCLOSURE BY THE VIATICAL SETTLEMENT BROKER OF THE  
7 AMOUNT AND METHOD OF CALCULATING THE VIATICAL SETTLEMENT BROKER'S  
8 COMPENSATION, INCLUDING ANYTHING OF VALUE PAID OR GIVEN TO A VIATICAL  
9 SETTLEMENT BROKER FOR THE PLACEMENT OF A POLICY;

10 (IV) IF THE POLICY TO BE VIATICATED HAS BEEN ISSUED AS A  
11 JOINT POLICY OR INVOLVES FAMILY RIDERS OR ANY COVERAGE OF A LIFE OTHER  
12 THAN THE INSURED UNDER THE POLICY TO BE VIATICATED, THE VIATOR SHALL BE  
13 INFORMED OF THE POSSIBLE LOSS OF COVERAGE ON THE OTHER LIVES UNDER THE  
14 POLICY AND SHALL BE ADVISED TO CONSULT WITH AN INSURANCE PRODUCER OR  
15 THE INSURER ISSUING THE POLICY FOR ADVICE ON THE PROPOSED VIATICAL  
16 SETTLEMENT;

17 (V) 1. THE DOLLAR AMOUNT OF THE CURRENT DEATH BENEFIT  
18 PAYABLE TO THE VIATICAL SETTLEMENT PROVIDER UNDER THE POLICY; AND

19 2. IF KNOWN, THE AVAILABILITY OF ANY ADDITIONAL  
20 GUARANTEED INSURANCE BENEFITS, THE DOLLAR AMOUNT OF ANY ACCIDENTAL  
21 DEATH AND DISMEMBERMENT BENEFITS UNDER THE POLICY, AND THE VIATICAL  
22 SETTLEMENT PROVIDER'S INTEREST IN THOSE BENEFITS; AND

23 (VI) 1. THE NAME, BUSINESS ADDRESS, AND TELEPHONE  
24 NUMBER OF THE INDEPENDENT THIRD PARTY ESCROW AGENT; AND

25 2. THE FACT THAT THE VIATOR OR OWNER MAY INSPECT OR  
26 RECEIVE COPIES OF THE RELEVANT ESCROW OR TRUST AGREEMENTS OR  
27 DOCUMENTS.

28 (G) IF THE VIATICAL SETTLEMENT PROVIDER TRANSFERS OWNERSHIP OR  
29 CHANGES THE BENEFICIARY OF THE POLICY, THE VIATICAL SETTLEMENT PROVIDER  
30 SHALL COMMUNICATE THE CHANGE IN OWNERSHIP OR BENEFICIARY TO THE  
31 INSURED WITHIN 20 DAYS AFTER THE CHANGE.

32 8-607.

33 (A) A REGISTRATION EXPIRES AT THE END OF EVERY OTHER YEAR ON THE  
34 ANNIVERSARY OF THE REGISTRATION UNLESS IT IS RENEWED AS PROVIDED IN THIS  
35 SECTION.

36 (B) BEFORE A REGISTRATION EXPIRES, THE REGISTRANT MAY RENEW IT FOR  
37 AN ADDITIONAL 2-YEAR TERM, IF THE REGISTRANT:

38 (1) OTHERWISE IS ENTITLED TO BE REGISTERED;

1 (2) FILES WITH THE COMMISSIONER A RENEWAL APPLICATION ON THE  
2 FORM THAT THE COMMISSIONER REQUIRES; AND

3 (3) PAYS TO THE COMMISSIONER A RENEWAL FEE OF \$50.

4 (C) AN APPLICATION FOR RENEWAL OF A REGISTRATION SHALL BE  
5 CONSIDERED MADE IN A TIMELY MANNER IF IT IS POSTMARKED ON OR BEFORE THE  
6 ANNIVERSARY DATE OF THE REGISTRATION OF THE YEAR OF RENEWAL.

7 8-608.

8 SUBJECT TO THE HEARING PROVISIONS OF TITLE 2 OF THIS ARTICLE, THE  
9 COMMISSIONER MAY DENY A REGISTRATION TO AN APPLICANT OR REFUSE TO  
10 RENEW, SUSPEND, OR REVOKE THE REGISTRATION OF A REGISTRANT IF THE  
11 APPLICANT OR REGISTRANT:

12 (1) KNOWINGLY MAKES A MATERIAL MISSTATEMENT IN AN  
13 APPLICATION FOR REGISTRATION;

14 (2) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO  
15 OBTAIN A REGISTRATION FOR THE APPLICANT OR REGISTRANT OR FOR ANOTHER;

16 (3) HAS BEEN CONVICTED OF A FELONY OR OF A MISDEMEANOR  
17 INVOLVING MORAL TURPITUDE;

18 (4) IN CONNECTION WITH THE VIATICAL SETTLEMENT CONTRACT AND  
19 RELATED INSURANCE APPLICATION, COMMITS FRAUD OR ENGAGES IN ILLEGAL OR  
20 DISHONEST ACTIVITIES;

21 (5) OTHERWISE HAS SHOWN A LACK OF TRUSTWORTHINESS OR  
22 COMPETENCE TO ACT AS A VIATICAL SETTLEMENT BROKER OR VIATICAL  
23 SETTLEMENT PROVIDER; OR

24 (6) VIOLATES ANY PROVISION OF THIS SUBTITLE OR A REGULATION  
25 ADOPTED UNDER IT.

26 8-609.

27 INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING A REGISTRATION,  
28 THE COMMISSIONER MAY:

29 (1) IMPOSE ON THE HOLDER A PENALTY NOT EXCEEDING \$125,000 FOR  
30 EACH VIOLATION OF THIS SUBTITLE; AND

31 (2) REQUIRE THE HOLDER TO MAKE RESTITUTION TO ANY PERSON  
32 THAT HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION OF THIS  
33 SUBTITLE.

1 8-610.

2 (A) IT IS A VIOLATION OF THIS SUBTITLE FOR A VIATICAL SETTLEMENT  
3 BROKER OR VIATICAL SETTLEMENT PROVIDER TO:

4 (1) VIOLATE ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION  
5 ADOPTED UNDER THIS SUBTITLE;

6 (2) FAIL TO REGISTER WITH THE COMMISSIONER IN ACCORDANCE WITH  
7 THIS SUBTITLE BEFORE ACTING OR REPRESENTING ITSELF AS A VIATICAL  
8 SETTLEMENT BROKER OR VIATICAL SETTLEMENT PROVIDER;

9 (3) FAIL TO PROVIDE A VIATOR WITH A DISCLOSURE STATEMENT IN  
10 ACCORDANCE WITH THIS SUBTITLE;

11 (4) FAIL TO ALLOW A VIATOR TO RESCIND A VIATICAL SETTLEMENT  
12 CONTRACT UP TO AT LEAST 15 CALENDAR DAYS AFTER THE RECEIPT OF THE  
13 VIATICAL SETTLEMENT PROCEEDS BY THE VIATOR; AND

14 (5) FAIL TO DELIVER TO A VIATOR THE VIATICAL SETTLEMENT  
15 PROCEEDS IN ACCORDANCE WITH THIS SUBTITLE.

16 (B) IT IS A VIOLATION OF THIS SUBTITLE FOR A PERSON TO ENTER INTO A  
17 VIATICAL SETTLEMENT CONTRACT WITHIN A 2-YEAR PERIOD COMMENCING WITH  
18 THE DATE OF ISSUANCE OF THE INSURANCE POLICY TO BE ACQUIRED UNDER THE  
19 VIATICAL SETTLEMENT CONTRACT UNLESS:

20 (1) THE VIATOR CERTIFIES TO THE VIATICAL SETTLEMENT PROVIDER  
21 THAT WITHIN THE 2-YEAR PERIOD:

22 (I) THE POLICY WAS ISSUED ON THE VIATOR'S EXERCISE OF  
23 CONVERSION RIGHTS ARISING OUT OF A GROUP OR INDIVIDUAL POLICY;

24 (II) THE TOTAL TIME COVERED UNDER THE CONVERSION POLICY  
25 AND THE PRIOR POLICY IS AT LEAST 24 MONTHS;

26 (III) THE TIME COVERED UNDER THE GROUP POLICY IS  
27 CALCULATED WITHOUT REGARD TO ANY CHANGE IN INSURANCE CARRIERS; AND

28 (IV) THE COVERAGE UNDER THE GROUP POLICY HAS BEEN  
29 CONTINUOUS AND UNDER THE SAME GROUP SPONSORSHIP; ~~OR~~

30 (2) THE VIATOR SUBMITS INDEPENDENT EVIDENCE TO THE VIATICAL  
31 SETTLEMENT PROVIDER THAT WITHIN THE 2-YEAR PERIOD THE INSURED BECAME  
32 TERMINALLY ILL OR CHRONICALLY ILL; OR

33 (3) THE VIATOR SUBMITS INDEPENDENT EVIDENCE TO THE VIATICAL  
34 SETTLEMENT PROVIDER THAT WITHIN THE 2-YEAR PERIOD THE VIATOR OR INSURED  
35 DISPOSED OF OWNERSHIP INTERESTS IN A CLOSELY HELD CORPORATION.

1 (C) ANY COPIES OF CERTIFICATION OR INDEPENDENT EVIDENCE REQUIRED  
2 UNDER SUBSECTION (B) OF THIS SECTION SHALL BE:

3 (1) SUBMITTED TO THE INSURER WHEN THE VIATICAL SETTLEMENT  
4 PROVIDER SUBMITS A REQUEST TO THE INSURER FOR VERIFICATION OF COVERAGE;  
5 AND

6 (2) ACCOMPANIED BY A LETTER OF ATTESTATION FROM THE VIATICAL  
7 SETTLEMENT PROVIDER THAT THE COPIES OF CERTIFICATION OR INDEPENDENT  
8 EVIDENCE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION ARE TRUE AND  
9 CORRECT COPIES OF THE DOCUMENTS RECEIVED BY THE VIATICAL SETTLEMENT  
10 PROVIDER.

11 SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act shall  
12 affect the jurisdiction of the Securities Commissioner of the Office of the Attorney  
13 General of Maryland.

14 SECTION 3. AND BE IT FURTHER ENACTED, That, in the absence of an  
15 order by the Maryland Insurance Commissioner to the contrary, a viatical settlement  
16 provider or a viatical settlement broker transacting business in this State on the  
17 effective date of this Act may continue to transact business in this State without being  
18 registered, as required under Section 1 of this Act, until the Commissioner approves  
19 or disapproves the viatical settlement provider's or viatical settlement broker's  
20 application for registration if:

21 (a) the viatical settlement provider or viatical settlement broker applies for  
22 registration no later than 30 days after the date the Commissioner makes available  
23 viatical settlement provider registration applications or viatical settlement broker  
24 registration applications; and

25 (b) the viatical settlement provider or viatical settlement broker complies with  
26 all other provisions of this Act.

27 SECTION 4. AND BE IT FURTHER ENACTED, That the Maryland  
28 Insurance Administration shall report, in accordance with § 2-1246 of the State  
29 Government Article, to the Senate Finance Committee and the House Economic  
30 Matters Committee 1 year after the date the Maryland Insurance Commissioner  
31 makes available viatical settlement provider registration applications and viatical  
32 settlement broker registration applications on whether:

33 (a) the registration fee under § 8-604 of the Insurance Article, as enacted by  
34 Section 1 of this Act, is adequate to cover the cost incurred by the Administration for  
35 the regulation of viatical settlement brokers and viatical settlement providers; and

36 (b) any change to the registration fee is appropriate.

37 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take  
38 effect October 1, 2004.

